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Federal Communications Commission
Office of the Secretary

November 21, 1991

BY HAND

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: **Review of the Policy Implications of the Changing Video Marketplace MM Docket 91-221**

Dear Ms. Searcy:

On behalf of Pinelands, Inc., enclosed please find an original and five (5) copies of its Comments submitted in the above-referenced proceeding.

Sincerely,

Michael R. Gardner

Enclosures

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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Review of the Policy	)	MM Docket 91-221
Implications of the	)	
Changing Video Marketplace	)	

To: The Commission

COMMENTS OF PINELANDS, INC.

Pinelands, Inc. ("Pinelands"), by its attorneys, submits these comments in response to the Commission's Notice of Inquiry, MM Docket 91-221, released August 7, 1991 ("NOI"). Pinelands is the parent corporation of WWOR-TV, Inc., licensee of WWOR-TV, Secaucus, New Jersey. WWOR-TV is New Jersey's only VHF television station and the largest independent station in the country, serving New Jersey viewers, as well as television viewers in New York and Connecticut.

In the NOI, the Commission seeks comment on the public policy implications that flow from the recent changes in the video marketplace, including the increase in competition and its effect upon the broadcast industry.[1] For the reasons discussed below, Pinelands submits that the Commission should eliminate the twelve-

[1] The Commission primarily relies on the recent trends that are described in Office of Plans and Policy Working Paper #26. Broadcast Television in a Multichannel Marketplace, DA 91-817, 6 FCC Rcd 3996 (1991) ("OPP Paper").

station numerical limit (the "12-station rule") on the ownership of television stations, and should further relax the 25 percent audience reach limitation as it applies to non-network group owners. This modification of the multiple ownership rules will allow independent stations to take advantage of certain marketplace efficiencies and economies of scale, and could facilitate the development of new, ad hoc networks which could compete effectively with the established networks, thereby providing greater diversity of opinions and programming choices for the American television audience.

A. The Commission Should Modify Its Multiple Ownership Rules So That Independent Stations Can Compete More Effectively Against The Networks

Contrary to suggestions that the major television networks are in jeopardy, those networks, by their own admission,[2] remain the nation's dominant video outlet despite the increase in competition throughout the video marketplace. Through the allocation of the VHF spectrum in 1952, the major networks have the enormous spectrum advantage of owning and operating ideally positioned VHF

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[2] For example, a recent NBC advertising campaign claims "Network viewership is down. You've heard these lies and excuses a million times. So often, you're tempted to believe them. Don't. Truth is . . . viewership is as strong as ever . . . ." Moreover, CBS' Laurence Tisch recently said, "I'm extremely buoyant (about television) . . . . There will always be a network television business as long as we keep putting on good programs." The New York Times, June 3, 1991.

stations in virtually every major market. And while the networks' overall market share has declined in recent years, the networks still reach 98% of American households[3] and their audience size has increased since 1970.[4]

Thus, despite forecasts of declining revenues for broadcast television stations, the more significant threat from a public interest standpoint is that independent television stations will be unable to effectively compete against the networks in this competitive and economically adverse environment. The networks and their massive corporate parents will not only outlast the difficult economic environment of the 1990s as predicted by the OPP Paper,[5] they will benefit from the demise or reduction in the viability of their weaker competition, independent stations. Thus, independent stations must restructure and regroup in order to survive.

In this regard, the Commission should consider modifying its rules and policies with the survival and strengthening of independent stations in mind. In particular, the 12-station rule should be modified so that owners of independent stations, should they find it

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[3] Kagan Media Index, April 22, 1990.

[4] Television Bureau of Advertising Trends in Media, March 1990.

[5] See generally, OPP Paper, supra.

desirable, can take advantage of the marketplace efficiencies that result from ownership integration on a scale involving more than 12 stations.[6] Through the efficiency of group ownership, activities such as station management, marketing, personnel and bookkeeping may be consolidated, thereby reducing general operating costs. Moreover, as evident with the networks' history of news gathering, group owners of large, diverse outlets, even if primarily UHF stations, can devote more of their resources to news gathering and program production than can individual owners or smaller group owners of independent stations, thus ultimately benefitting the viewing public.

Further, in addition to eliminating the 12-station rule, the Commission should relax the 25 percent audience reach limitation as it applies to non-network group owners, while continuing to discount the audience reach of UHF stations. This will allow a group owner, or a consortium of group owners, to establish independent voices in key markets which could compete more effectively against the networks and possibly provide the foundation for the development of new national networks made up of independent stations. The Commission has recognized the importance of owned-and-operated stations

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[6] Of course, many of these would necessarily be UHF stations due to the networks' ownership of the dominant VHF stations in the major markets.

in the development of a network system.[7] Thus, in order for a new network of independent stations to evolve, group owners must be able to acquire a sufficient base of stations throughout key markets. The relaxation of the 25 percent cap for these potential ad hoc groups of independent stations will provide the flexibility necessary to achieve this goal, the by-product of which would clearly be consistent with the Commission's goal of promoting greater diversity, both of outlets and broadcast voices.[8]

In addition to relaxing the 25 percent cap for non-network group owners, the Commission should recognize that the networks continue to dominate broadcast television by virtue of their owned-and-operated VHF stations. Thus, the 25 percent audience reach limitation should not be relaxed as it applies to the networks. Indeed, the Commission explicitly recognized the need for a safeguard against further network expansion in its adoption of a 25 percent audience reach limitation in addition to the 12-station rule in 1985 by stating, "[b]ecause network owned and operated stations are generally concentrated in highly populated areas and

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[7] Amendment of the Multiple Ownership Rules (NPRM), 95 FCC 2d 360, at para. 39 (released October 20, 1983).

[8] Pinelands advocates a relaxation of the 25% limit as to non-network group owners, but does not herein provide specific proposals, which should be the subject of public comment.

therefore already have significant population penetration, this [25%] reach restriction will preclude substantial network expansion."[9] In view of the continued dominant reach of the networks, the Commission's concerns about the undesirability of substantial network expansion are still valid today. Therefore, the Commission should retain its cap on a 25% share of the audience as it applies to network ownership of television stations.

B. The Proposed Modification Of The Multiple Ownership Rules Will Not Adversely Affect The Commission's Interest In Promoting Viewpoint Diversity

The modification of the multiple ownership rules in the manner discussed above will not adversely affect the Commission's policy concerns regarding viewpoint diversity. When the 7-station limit was relaxed to the current 12-station limit in 1984, the Commission found that because of a dramatic increase in the number of media outlets and idea sources nationwide, the elimination of the 7-station limit would, at worst, result in an "inconsequential decrease in idea sources nationwide."[10] Further, the Commission found that the

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[9] See Amendment of the Multiple Ownership Rules (Reconsideration), 100 FCC 2d 74 (released February 1, 1985).

[10] Amendment to the Multiple Ownership Rules, (Report and Order), 100 FCC 2d 17, at para. 61 (released August 3, 1984).

record demonstrated "that group owners do not impose monolithic viewpoints on local media outlets."[11]

Since 1984, the changes noted by the Commission have continued -- the mass media market continues to undergo explosive growth and change. Cable television continues to thrive, and new technologies such as MMDS, DBS and video compression, mere possibilities in 1984, are now a reality.[12] Considering this rapid change in video alternatives, the likelihood that the modification of the multiple ownership rules as proposed above will result in any substantial decrease in the number of sources of ideas available nationwide is even less today than in 1984. To the contrary, as explained above, the proposed adjustment of the multiple ownership rules might well further the Commission's goal in promoting viewpoint diversity by providing the means for the potential establishment of new network systems.

Finally, there is nothing to suggest that since 1984, group owners are any more likely to propose a monolithic set of ideas on their stations. As such, the proposed modification of the multiple ownership rules will not adversely impact viewpoint diversity.

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[11] Id.

[12] See generally, OPP Paper, supra.

C. <u>Conclusion</u>

Pinelands supports the Commission's effort to re-examine its rules and policies in light of the recent changes in video marketplace. In this regard, Pinelands proposes that the Commission eliminate the 12-station limit on the ownership of television stations, and further relax the 25 percent audience reach limitation as it applies to non-network group owners. The modification of the multiple ownership rules in this manner will allow independent stations to take advantage of certain marketplace efficiencies and will provide the necessary flexibility for the potential development of new national networks comprised of independent stations. At the same time, the Commission should retain the 25 percent audience reach limitation as a safeguard against further expansion by the networks.

Respectfully submitted,

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Dated: November 21, 1991